

JAN 13 1941
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IN THE
Supreme Court of the United States

OCTOBER TERM 1940

No. 642

VIRGIL C. CRITES,

Petitioner,

vs.

**ALBERT A. RADTKE, LEONARD DAY, THOMAS J.
MARTIN, RADTKE PATENTS CORPORATION,
A CORPORATION, UNITED RESEARCH CORPORATION,
A CORPORATION, AND WARNER BROTHERS PICTURES
INC., A CORPORATION,**

Respondents.

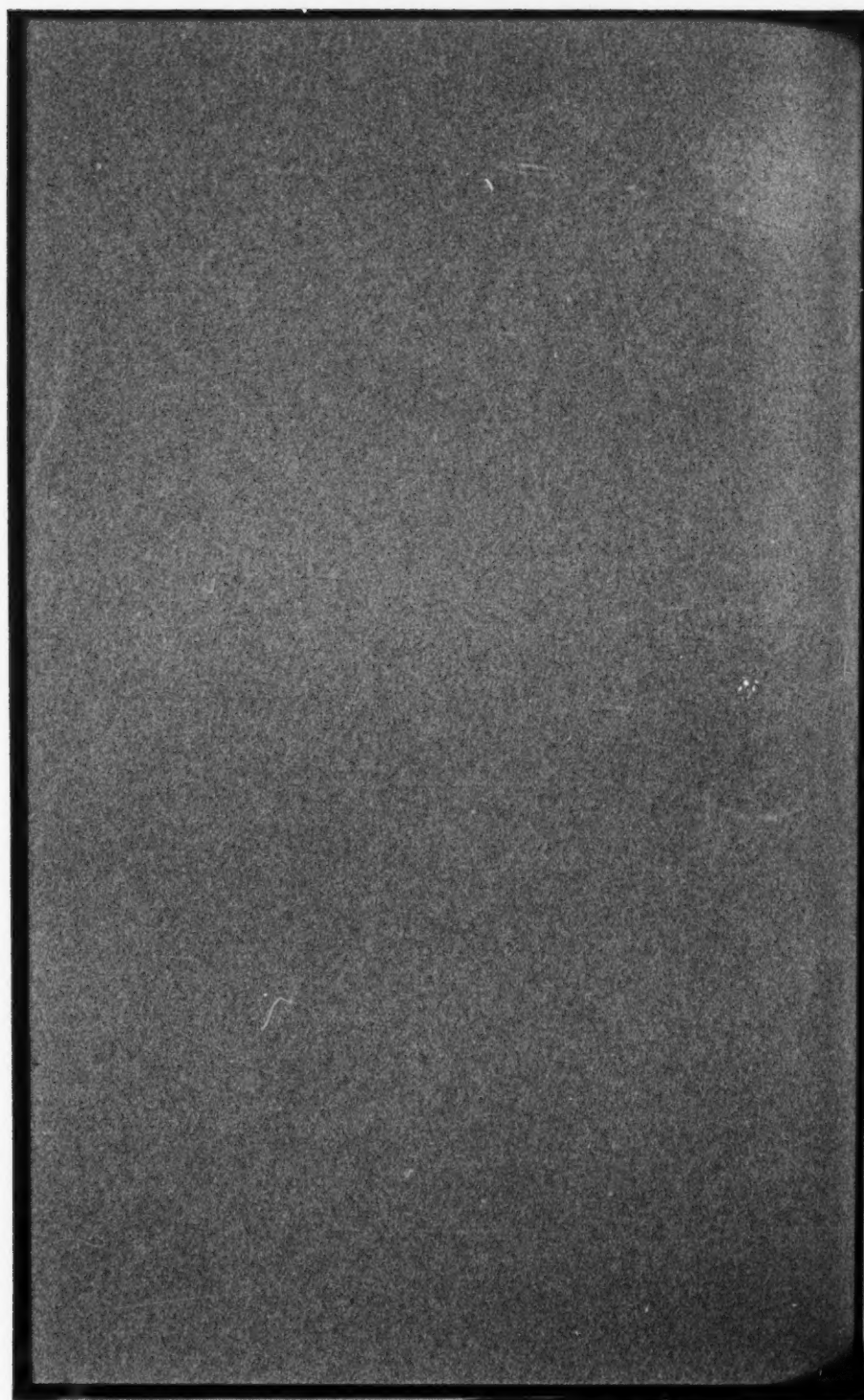
**RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

**STEPHEN B. PHILBIN,
ROBERT W. PERKINS,
LEONARD DAY,
HENRY TUREN,**

Counsel for Respondents.

January, 1941.

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ALBERT A. RADTKE, LEONARD DAY,
THOMAS J. MARTIN, RADTKE PATENTS
CORPORATION, a corporation, UNITED
RESEARCH CORPORATION, a corpora-
tion, and WARNER BROTHERS PIC-
TURES, INC., a corporation,
Respondents.

**RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI.**

The petition does not present any question on which varying views have been expressed by different courts, or any question of general or public importance.

As appears from the petition and the reported opinions in this suit, 19 F. Supp. 238 and 28 F. Supp. 282, the suit was filed on January 7, 1937 (19 F. Supp. 238), seeking specific performance of an oral contract alleged to have been made in 1916, with respect to an application for patent filed in 1922 in the United States Patent Office. A motion

to dismiss because of laches was granted, 19 F. Supp. 238, an amended complaint was filed, the suit was tried, the principal issue was whether the alleged contract was made and the trial court found as a fact that it was not, 28 F. Supp. 282.

Alleged grounds for the writ.

The reasons asserted by petitioner for allowance of the writ are that an important question of law is involved and that the Circuit Court of Appeals for the Second Circuit acted improperly in denying petitioner's motions (Petition, Questions Presented, Reasons Relied Upon, pp. 7, 8).

(a) The important question of law is said to be the right of an employer to an invention made by an employee, citing decisions on the respective rights of employer and employee in the absence of an express contract. But the law on that point is well settled, as is apparent from the cited decisions. Also, that principle is not involved here, because both petitioner and Radtke testified there was an express contract, the disagreement being as to its terms (and the trial judge believing Radtke), 28 F. Supp. 282.

(b) The Circuit Court of Appeals did not act improperly. The opinion of the district judge, dismissing the suit, was filed July 6, 1939. After a motion for rehearing etc. had been denied, petitioner on February 1, 1940, filed a notice of appeal to the Circuit Court of Appeals. On April 29, 1940, a motion was argued in the Circuit Court of Appeals for leave to appeal *in forma pauperis*, which motion was denied on May 23, 1940, the Court stating:

"Motion denied on the ground that no meritorious ground for appeal is disclosed by the papers submitted. Apparently the appeal raises only questions as to the sufficiency of the evidence and no transcript of the evidence has been supplied".

Petitioner thereafter submitted to the Court a transcript of evidence with a petition for rehearing, which was denied on July 29, 1940, with the statement:

"Motion denied on the ground that the additional papers submitted still leave the appeal without apparent legal merit."

The order of the Court, filed July 31, 1940, was:

"By direction of the Court it is further ordered that the time of said appellant to file the printed record and appellant's brief, if so advised, be and hereby is extended to September 15, 1940, in default of which an order will be entered without notice dismissing the appeal."

On September 18, 1940, petitioner filed a petition for extension of time, which was denied on October 5, 1940, with the statement "Motion denied".

A petition for rehearing was denied on October 5, 1940, with the statement:

"The within petition for rehearing of appellant's motion for extension of time to file his printed record and brief for a period of 60 days after September 15, 1940, is denied. Under Rule 15.2 (b) of this court appellant in circumstances such as are here disclosed must show reasons excusing his delay and that there is a substantial question to be presented on appeal. Appellant has not shown such a substantial question; nor has he explained his delay in procuring the loan which he says will now enable him to cause the record to be printed."

The Circuit Court of Appeals did not act improperly. As appears from the petition, it considered petitioner's application to prosecute the appeal *in forma pauperis*, on the basis of a transcript of evidence submitted by petitioner. On July 31, 1940 it denied the motion, but granted additional time within which to file a printed record and

brief, until September 15, 1940. Thereafter, a request for a further extension of time was refused, on the ground that petitioner had not shown "reasons excusing his delay and that there is a substantial question to be presented on appeal" (decision of October 5, 1940).

It is obvious that at least by October 5, 1940 petitioner had had ample time, after the decision on final hearing, filed July 6, 1939, to perfect an appeal in accordance with the rules of the Circuit Court of Appeals. Petitioner has failed to show that the Circuit Court of Appeals was wrong, on the record before it, in acting as it did.

The action of the Circuit Court of Appeals was correct, and there are no conflict of decisions, no question of public or general importance and no new principle of law.

The petition should be denied.

Respectfully submitted,

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ROBERT W. PERKINS,
LEONARD DAY,
HENRY TURIN,
Counsel for Respondents.

January, 1941.

